

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

JORGE ALEJANDRO ROJAS,
Plaintiff/Counter-Defendant,

Case No: 2:23-cv-12140-LVP-EAS

vs.

Hon. District Court Judge Linda V. Parker
Hon. Magistrate Judge Elizabeth A. Stafford

DV INJURY LAW PLLC,
VENAR RAAD AYAR and
DANIEL P. HEILBRUN,
Defendants/Counter-Plaintiffs/
Third-Party Plaintiffs,

vs.

MARK NOWICKI,
Third-Party Defendant.

**AMENDED MOTION TO QUASH SUBPOENAS OR FOR
PROTECTIVE ORDER**

Defendants/Counter-Defendants/Third-Party Plaintiffs file their Amended Motion To Quash Subpoenas Or For Protective Order (which includes four instead of three subpoenas) as follows:

1. Plaintiff/Counter-Defendant issued four subpoenas on December 28, 2023, all due on January 10, 2024 (attached As Exhibits A, B, C and D). Exhibit A is a Subpoena to Talk It Pro LLC. This Subpoena demands information for the time period of August 21, 2019 to the present, including "Identity what entity was billed for the use of 313-216-0496 in 2003. In your response, please include the entity's name, physical addresses, e-mail addresses and telephone numbers you have for that entity. If this is an end user of yours, please also provide complete CDRs for the period August 21, 2019 to present." CDR means Call Detail Record which is collected information and data for processing usage, capacity, performance and diagnostic reports for evaluation in calling patterns, international calling and other

information. This data may disclose every number called, the length of time of each call, the name of the owner or user of the number called, the quality of the call and other technical information. Exhibit B is a Subpoena to VoIP Innovations, LLC, Exhibit C is a Subpoena to Peerless Network, Inc. and Exhibit D is a Subpoena to Level 3 Communications LLC d/b/a Lumen Technologies. These three Subpoenas demand information for the time period of all of 2023 to “Identify what entity was billed for the use of 331-216-0496 in 2023. In your response, please include the entity’s name, physical addresses, e-mail addresses and telephone numbers you have for that entity.”

2. All four Subpoenas relate to phone number 331-216-0496. This is the phone number alleged in paragraph 32 of the Complaint upon which one telephone call was made in violation of the Telephone Consumer Protection Act (TCPA). This very specific allegation is that the one call was made on August 4, 2023 at 2:24 p.m. (Complaint paragraph 23, ECF No. 1, Page ID.4).
3. The only date which is relevant to the factual allegation in the Complaint is August 4, 2023. This is the only date of alleged wrongdoing.
4. The subpoenas are objected to as directly irrelevant to the specific allegation of the Complaint, overbroad are feared such disclosures may lead to harassment and abuse. The information contained in the Call Detail Records contain data and information which have nothing to do with this case as this case is about the Complaint which alleges one phone call made on August 4, 2023 at 2:24 p.m. in contradiction to the TCPA. The CDR information will contain data on other calls and persons who have nothing to do with this Complaint.
5. Defendants’ position is that the subpoenas should be limited to August 4, 2023 and that the disclosure should be limited to that date as to the identity of the entity which was billed and the user entity’s name, physical address, phone number and e-mail address as of that date. No CDR information should be disclosed.
6. Movant in good faith has conferred or attempted to confer with the other affected parties in an effort to resolve this dispute without court action. However, the issuer of the subpoenas, Mr. Perrong, responded

by email on December 29 at 4:40 p.m. that “We are not going to consent to limiting the scope of a third-party subpoena to anything less than the full statute of limitations, especially not based on some theoretical, hypothetical argument of potential ‘privilege’ disclosure of overbroad, privileged information, particularly as the subpoenas are third party subpoenas which third parties have not objected on any of the bases you claim.” Ms. Barron responded by email on December 29 at 10:27 a.m that “From a defense perspective, I agree with Andrew; the subpoenas are proper and necessary.”

7. This motion is based on the Federal Rule of Civil Procedure, Rules 26 and 34 in particular.
8. In addition, Movant also relies on Rule 401 of the Federal Rules of Evidence, which states: “Evidence is relevant if (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.” Movant believes that applying the tests of 401 certainly means that any information obtained by the subpoenas limited to August 4, 2023 could be relevant and could be of consequence in determining the action. However, any information disclosed prior to August 4, 2023 does not relate to the factual allegation in the Complaint of a call on August 4, 2023 and does not support or deny or make the alleged fact more or less probable. Information about calls on August 4, 2023 is what is relevant as this information will either support or not support the only wrongful action complained of in the Complaint.

WHEREFORE, it is requested this Court issue an order quashing the subpoenas or in the alternative restrict the production of documents to August 4, 2023 and to the information as of that date about the user entity’s name, physical address, phone number and email address, order a stay on the subpoenas until a hearing or other order is entered and grant such other relief as may be deemed appropriate.

Respectfully submitted,

/s/ Mark L. Teicher P34301)

Mark L. Teicher (P34301)
Law Office of Venar Raad Ayar, PLLC
Of Counsel
30095 Northwestern Hwy., Ste. 102
Farmington Hills, MI 48334
(248) 420-9144
MarkLTeicher@AOL.COM

Date: December 29, 2023

BRIEF IN SUPPORT

This motion is based on the Federal Rule of Civil Procedure, Rules 26 and 34 in particular. In addition, Movant also relies on Rule 401 of the Federal Rules of Evidence, which states: Evidence is relevant if (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.” Movant believes that applying the tests of 401 certainly means that any information obtained by the subpoenas be limited to August 4, 2023 as that specific date’s information could be relevant and could be of consequence in determining the action. However, any information disclosed prior to August 4, 2023 does not make the factual allegation in the Complaint of a call on August 4. 2023 more or less probable.

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AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Michigan

Jorge Alejandro Rojas

Plaintiff

v.

DV Injury Law PLLC

Defendant

Civil Action No. 2:23-cv-12140

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

TALK IT PRO LLC

(Name of person to whom this subpoena is directed)

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: Identify what entity was billed for the use of 331-216-0496 in 2023. In your response, please include the entity's name, physical addresses, e-mail addresses and telephone numbers you have for that entity. If this is an end user of yours, please also provide complete CDRs for the period August 21, 2019 to present.

Place: DIRECTLY TO THE UNDERSIGNED COUNSEL
ELECTRONICALLY

Date and Time:

01/10/2024 5:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 12/28/2023

CLERK OF COURT

OR

/S/ ANDREW ROMAN PERRONG

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Jorge Rojas
is Perrong Law LLC, Andrew Roman Perrong, 2657 Mount Carmel Ave. , who issues or requests this subpoena, are:
Glenside, PA 19038, a@perronglaw.com, 215-225-5529

Notice to the person

If this subpoena commands the production of documents, information, or tangible things or the inspection of premises before trial, a notice and a copy of this subpoena must be served on the person to whom it is directed. For

EXHIBIT

A

this subpoena

and information, or tangible things or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party in this case before

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Michigan

Jorge Alejandro Rojas

Plaintiff

v.

DV Injury Law PLLC

Defendant

Civil Action No. 2:23-cv-12140

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

VoIP Innovations, LLC

(Name of person to whom this subpoena is directed)

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: Identify what entity was billed for the use of 331-216-0496 in 2023. In your response, please include the entity's name, physical addresses, e-mail addresses and telephone numbers you have for that entity.

Place: DIRECTLY TO THE UNDERSIGNED COUNSEL
ELECTRONICALLY

Date and Time:

01/10/2024 5:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

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Date: 12/28/2023

CLERK OF COURT

OR

/S/ ANDREW ROMAN PERRONG

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Jorge Rojas is Perrong Law LLC, Andrew Roman Perrong, 2657 Mount Carmel Ave. , who issues or requests this subpoena, are: Glenside, PA 19038, a@perronglaw.com, 215-225-5529

Notice to the person

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EXHIBIT

B

his subpoena

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AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the
Eastern District of Michigan

Jorge Alejandro Rojas

Plaintiff

v.

DV Injury Law PLLC

Defendant

Civil Action No. 2:23-cv-12140

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Peerless Network, Inc.

(Name of person to whom this subpoena is directed)

☒ **Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: Identify what entity was billed for the use of 331-216-0496 in 2023. In your response, please include the entity's name, physical addresses, e-mail addresses and telephone numbers you have for that entity.

Place: DIRECTLY TO THE UNDERSIGNED COUNSEL ELECTRONICALLY	Date and Time: 01/10/2024 5:00 pm
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☐ **Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
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Date: 12/28/2023

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/S/ ANDREW ROMAN PERRONG

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Jorge Rojas is Perrong Law LLC, Andrew Roman Perrong, 2657 Mount Carmel Ave., who issues or requests this subpoena, are: Glenside, PA 19038, a@perronglaw.com, 215-225-5529

Notice to the person to whom this subpoena is directed: If this subpoena commands the production of documents, information, or tangible things or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party in this case before it is served on the person to whom it is directed. E

EXHIBIT

C

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Michigan

Jorge Alejandro Rojas

Plaintiff

v.

DV Injury Law PLLC

Defendant

Civil Action No. 2:23-cv-12140

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Level 3 Communications LLC d/b/a Lumen Technologies

(Name of person to whom this subpoena is directed)

☒ **Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material; Identify what entity was billed for the use of 248-237-4058 in 2023. In your response, please include the entity's name, physical addresses, e-mail addresses and telephone numbers you have for that entity.

Place: DIRECTLY TO THE UNDERSIGNED COUNSEL
ELECTRONICALLY

Date and Time:

01/10/2024 5:00 pm

☐ **Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

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Date: 12/28/2023

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/S/ ANDREW ROMAN PERRONG

Attorney's signature

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EXHIBIT

D

his subpoena

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